

ARKANSAS SUPREME COURT

No. CR 07-746

LARRY WAYNE GOODNIGHT
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 10, 2008

PRO SE APPEAL FROM THE CIRCUIT
COURT OF BENTON COUNTY, CR
2000-839, HON. TOM J. KEITH,
JUDGE

AFFIRMED.

PER CURIAM

In 2006, appellant Larry Wayne Goodnight, an inmate incarcerated in the Arkansas Department of Correction, filed in the trial court in which he had been convicted a pro se petition for writ of habeas corpus under Act 1780 of 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201 – 16-112-208 (Repl. 2006). The circuit court denied and dismissed the petition, and appellant brings this appeal of that order. We affirm the decision to dismiss the petition as there was no basis to issue the writ.

Appellant invoked Act 1780, but the petition that he filed did not present a claim cognizable under that act. In his petition, appellant's single claim alleged his sentence was illegal because the trial court imposed probation following a term of incarceration. He did not include in the petition any request for scientific testing, or allege scientific evidence would establish his actual innocence. Act 1780 provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See Graham*

v. State, 358 Ark. 296, 188 S.W.3d 893 (2004) (per curiam) (decision under prior law); *see also* Ark. Code Ann. § 16-112-103(a) (Repl. 2006).

Act 1780 contains a number of predicate requirements to be met before a circuit court can order any relief. *Douthitt v. State*, 366 Ark. 579, ___ S.W.3d ___ (2006) (per curiam). In particular, section 16-112-202 provides for the form that a motion for relief under the act must follow, and, in subsection (1), states that the motion must be for testing of specific evidence that was secured as a result of the conviction challenged. As appellant failed to request testing, he failed to present a motion appropriate for relief under Act 1780.

The trial court addressed the issue raised in the petition, perhaps treating the petition as if appellant had requested a writ of habeas corpus under Ark. Code Ann. §§ 16-112-101 – 16-112-123 (Repl. 2006). However, appellant was, at the time the petition was filed, and is, presently, incarcerated in Lincoln County. The trial court did not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam). Had appellant requested issuance of the writ under section 16-112-103, the trial court did not have jurisdiction to grant the writ. Although the trial court may not have appropriately considered the claim, because appellant did not state a claim under Act 1780 and failed to follow procedure for relief under the act, the trial court did not err in dismissing appellant's petition and denying relief.

Affirmed.